SUPREME COURT, U.S.

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No. 522

In the Supreme Court of the United States

OCTOBER TERM, 1957

SEATRAIN LINES, INC., APPELLANT

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

MOTION TO AFFIRM

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Pursuant to Rule 16, Paragraph 1 (c), of the Revised Rules of this Court, appellees United States of America and Interstate Commerce Commission move that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from a final judgment entered June 17, 1957, by a three-judge district court convened pursuant to 28 U. S. C. 2284 and 2325, dismissing appellant's complaint seeking to set aside an order of the Interstate Commerce Commission. The order, which was issued under the provisions of Section 303 (e) (2) of the Act, 49 U. S. C. 903 (e) (2), exempted from Part III of the Interstate Commerce

Act certain transportation engaged in by appellee Pan-Atlantic Steamship Corporation (Pan-Atlantic).

By the terms of Section 303 (d), 49 U. S. C. 903 (d), bulk petroleum, when carried alone in a vessel, is exempt from regulation under Part III of the Act. However, when regulated dry cargo is carried on the same vessel the bulk petroleum is subject to regulation unless an exemption order is obtained from the Commission under Section 303 (e) (2).

Pan-Atlantic, which presently possesses authority from the Commission to transport passengers and general commodities (J. St. 24A–25A), sought such an exemption order by application filed with the Commission on August 22, 1955. Appellant Seatrain Lines, Inc. (Seatrain) and certain railroads opposed the exemption upon the grounds that transportation of the commodities for which exemption was sought would be in substantial competition with movement of the same commodities by rail, and that grant of the exemption would permit Pan-Atlantic, a certificated common carrier, to carry commodities on the same vessels as both a contract and a common carrier, contrary to the intent of Section 310 of the Act (J. St. 26A).[1] On July 3, 1956, Division 4 of the Commission

[1] Seatrain, as a result of the Commission's action in *Seatrain Lines, Inc., Exemption Application—Oil*, 265 I. C. C. 806 (July 19, 1949, not printed in full) obtained an order of exemption similar to that requested by Pan-Atlantic (J. St. 4A–5A, 27A–28A). No findings under the National Transportation Policy were made by the Commission in that proceeding despite the charge by the railroads that the Commission in granting the application of Seatrain had "absolutely disregarded" any consideration of the National Transportation Policy. In answer to the charge, Seatrain asserted that not

issued the requested exemption order and ruled (J. St. 27A):

> The sole issue before us here is to determine whether the transportation by applicant as a contract carrier which by reason of the inherent nature of the commodities transported, their requirement of special equipment or their shipment in bulk, is not actually and substantially competitive with transportation by any common carrier subject to part I, II, or III. If this question is answered in the affirmative, under the provisions of section 303 (e) (2) of the act, we are authorized to exempt by order from the provisions of part III such of the transportation engaged in by applicant as we find necessary to carry out the therein declared policy of Congress. * * *

On September 20, 1956, Seatrain's petition for reconsideration of the order was denied, and the Commission made the order effective as of October 22, 1956. Seatrain then brought this action to set aside the Commission's order. The district court unanimously held that findings in terms of the National Transportation Policy (54 Stat. 899, 49 U. S. C. preceding § 1) are not necessary when granting an exemption to a carrier pursuant to the express declaration of Congressional policy contained in Section 303

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only was the exemption of its bulk oil movement required by Section 303 (e) (2) and the Congressional policy declared therein, but by the National Transportation Policy as well, since the order of exemption would "promote economical and efficient transportation service by carriers, sound economic conditions in transportation, and reasonable charges for transportation service."

(e) (2). The correctness of this ruling is the only issue presented in this appeal.

ARGUMENT

The question before the Commission was whether the transportation conducted by Pan Atlantic, as a contract carrier by water, fulfilled the qualifications of Section 303 (e) (2) of the Act [2] for an order by the Commission exempting such transportation pursuant to the declared policy of Congress contained in that subsection. If the Commission determines that the transportation does in fact qualify under the exemption provisions of Section 303 (e) (2), then by the terms of the section it becomes the duty of the Commission to exempt such transportation from the provisions of the Act.

Appellant's attack upon the Commission's order is grounded upon the concluding sentence of the National Transportation Policy declaration: "All of the provisions of this Act shall be administered and enforced

[2] Section 303 (e) (2) provides in part:

> It is hereby declared to be the policy of Congress to exclude from the provisions of this part, in addition to the transportation otherwise excluded under this section, transportation by contract carriers by water which, by reason of the inherent nature of the commodities transported, their requirement of special equipment or their shipment in bulk, is not actually and substantially competitive with transportation by any common carrier subject to this part or part I or part II. Upon application of a carrier * * * the Commission shall, subject to such reasonable conditions and limitations as the Commission may prescribe, by order exempt from the provisions of this part such of the transportation engaged in by such carrier as it finds necessary to carry out the policy above declared.

with a view to carrying out the above declaration of policy." But, as the court below pointed out, the Water Carrier Act (Part III of the Interstate Commerce Act) grants certain absolute exemptions from its provisions (J. St. 19A–20A). Conduct which is within the scope of these exemptions, being excluded from the Act's regulatory provisions, is also excluded from application to it of the National Transportation Policy. These absolute exemptions represent, in effect, a legislative determination that the needs of the National Transportation Policy are best served by non-regulation.

Section 303 (e) (2) likewise provides an absolute exemption provided certain facts are found to exist. Upon the making of such findings, including the finding that the exemption is necessary to carry out the policy declared in the section, the exemption becomes mandatory. The cases cited by appellant as being in conflict with the decision of the court below (J. St. 5) are rate cases or involve certificates of public convenience and necessity as to which the National Transportation Policy is obviously applicable, and have no bearing on the applicability of the Policy to the exemption provisions of Section 303 (e) (2).

In contrast with certain other exemption provisions of Section 303, such as found in 303 (e) (1) and 303 (g), 49 U. S. C. 903 (e) (1) and 903 (g), which are made expressly subject to the National Transportation Policy, the exemption provisions of Section 303 (e) (2) not only do not refer to the National Transportation Policy, but contain an explicitly different declaration of policy. The section declares: "It is hereby declared

to be the policy of Congress to exclude from the provisions of this part" certain transportation if for any of three specified reasons it is not "actually and substantially competitive with" transportation by any common carrier subject to the Act. It is a general rule of statutory construction that force and effect shall be given to specific provisions of an act over general policy announcements, and observance of this general rule requires stronger adherence in this case where Congress has declared, within the specific provision itself, the policy which the Commission must follow.

We submit that the court below was correct in stating: "If the Commission were to exercise its power and grant or withhold an exemption upon a consideration other than that stated in the statute in relation to any particular exemption, the Commission would have erred" (J. St. 21A). And the court, in concluding that the Commission is not either required or authorized to apply the National Transportation Policy when passing upon applications for grant of the exemptions provided for in Section 303 (e) (2), placed the various exemption provisions of Section 303, 49 U. S. C. 903, in harmony in the following paragraph from its opinion (J. St. 19A–20A):

> The Act provides for absolute exemptions and qualified exemptions. Exemptions are absolute in the sense that carriers may operate free from Commission regulation or scrutiny if specified conditions are satisfied. Exemptions are qualified in the sense that the Commission by order can create an exemption or remove an otherwise existing exemption. With respect to each type of qualified exemption,

Congress has spelled out the basis upon which such exemption is to be extended or withdrawn by Commission order. Whether a carrier operates under a 903 (e) (1) exemption or a 903 (g) exemption is dependent upon whether operation under such an exemption would be consistent with achievement of the aims of the National Transportation Policy. On the other hand, in Section 903 (e) (2) no mention is made of the National Transportation Policy. Rather, the basic consideration is whether transportation by contract carrier is actually and substantially competitive with transportation by any carrier subject to the water, rail or motor provisions of the Interstate Commerce Act. If if is found such transportation is not substantially competitive, either by reason of the inherent nature of the commodities transported, their requirement of special equipment or their shipment in bulk, the Commission may exempt so much of such transportation as is necessary to accomplish the stated policy of Congress to exclude such transportation from regulation.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision below is correct and that this appeal presents no substantial question. The judgment of the district court should be affirmed.

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